

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-56

FCC MAIL SECTION

JUN 29 4 08 PM '92

DISPATCHED

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Bay City and Edna, Texas)

RM-7551

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 17, 1992;

Released: June 29, 1992

By the Chief, Allocations Branch:

1. The Commission has before it the *Notice of Proposed Rule Making* in this proceeding proposing the substitution of Channel 269C1 for Channel 241C2 at Bay City, Texas, and the modification of the construction permit of Station KXGJ, Bay City, Texas, to specify operation on Channel 269C1. 7 FCC Rcd 2106 (1992). In order to accommodate this upgrade, the *Notice* also proposed the substitution of Channel 241A for vacant but applied for Channel 269A at Edna, Texas. In response to the *Notice*, Ammerman Enterprises, Inc. ("Ammerman") and Roy E. Henderson filed comments. Ammerman filed reply comments. For the reasons discussed below, we are upgrading Station KXGJ to specify operation on Channel 269C1, and are substituting Channel 241A for Channel 269A at Edna, Texas.

2. This proceeding began with the filing of a petition for rule making by Ammerman, permittee of Station KXGJ, Bay City, Texas, proposing the substitution of Channel 241C1 for Channel 241C2 at Bay City, and the modification of its construction permit to specify operation on Channel 241C1. In the *Notice*, we referred to the fact that we are considering in MM Docket No. 89-459 a proposed substitution of Channel 269C2 for Channel 241C2 at Bay City in order to accommodate a resolution of that proceeding involving proposed channel substitutions at Edna and Giddings, Texas. Instead of modifying the Station KXGJ construction permit to Channel 269C2 in a separate proceeding and then proposing a co-channel Channel 269C1 upgrade in this proceeding, the *Notice* proposed a Channel 269C1 upgrade in this proceeding as a one-step process. Ammerman filed comments and reply comments supporting this proposal. In his comments, Henderson notes that in MM Docket No. 90-90, he filed a counterproposal involving multiple channel substitutions looking toward a Channel 285C1 upgrade for his Station KMIA in Rosen-

berg, Texas. Included among the channel substitutions are the substitution of Channel 241A for Channel 269A at Edna, and the substitution of Channel 269C2 for Channel 241C2 at Bay City. In this regard, Henderson contends that this aspect of his counterproposal in MM Docket No. 90-90, should have been referenced in the *Notice*, and that MM Docket No. 90-90 should be resolved either prior to or in conjunction with the *Report and Order* in this proceeding.

3. We believe that the public interest would be served by upgrading Station KXGJ to specify operation on Channel 269C1.¹ In order to accommodate this upgrade, we are also substituting Channel 241A for Channel 269A at Edna, Texas.² In regard to the Henderson comments, we reject any contention that we should delay action in this proceeding pending the resolution of MM Docket No. 90-90. Resolving this proceeding enables us to conclude an earlier proceeding in MM Docket No. 89-459. We are aware that Henderson advanced a counterproposal in MM Docket No. 90-90 involving a Channel 269C2 substitution at Bay City and a Channel 241A substitution at Edna. Our action in this proceeding does not prejudice the Henderson counterproposal in MM Docket No. 90-90 in any manner. We also note that Henderson's counterproposal has no decisional significance in this proceeding.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 13, 1992, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

City	Channel No.
Bay City, Texas	269C1, 273C1
Edna, Texas	241A

5. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of Ammerman Enterprises, Inc. for Station KXGJ, Bay City, Texas, IS MODIFIED to specify operation on Channel 269C1 in lieu of Channel 241C2, subject to the following conditions:

- (a) Within 90 days of this *Order*, the permittee shall submit to the Commission a minor change application for construction permit (FCC Form 301) specifying the new facilities.
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact assessment pursuant to Section 1.1307 of the Commission's Rules.

¹ The reference coordinates for the Channel 269C1 allotment at Bay City, Texas, are 28-45-58 and 96-04-11.

² The reference coordinates for the Channel 241A allotment at Edna, Texas, are 28-58-42 and 96-38-48. Robert M. Mason, ap-

plicant for the Channel 269A allotment at Edna (File No. BPH-890111MF), will be permitted to amend his application to specify Channel 241A without loss of cut-off protection.

6. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change of community of license and/or upgrade. As a result of this proceeding, Ammerman Enterprises, Inc., permittee of Station KXGJ, is required to submit a rule making fee in addition to the required fee for the application to effect the change in community of license and/or upgrade.

7. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send a copy of this *Report and Order* BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to Robert M. Mason, 1943 Greenview, Northbrook, Illinois, 60061.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau